



## **SUBCONTRACTOR AGREEMENT**

This Subcontractor Agreement ("Agreement") is made by and between Health Management Systems, Inc.(HMS), a wholly owned subsidiary of HMS Holdings Corp., a New York corporation, and SUMO Group, Inc., an Iowa corporation ("Subcontractor"), with reference to the following:

WHEREAS, HMS is engaged in the business of providing a variety of cost containment and third party liability identification and recovery services for government sponsored healthcare programs and plans and other entities ; and

WHEREAS, in connection therewith, HMS wishes to retain Subcontractor to perform estate recovery and special needs and medical assistance income, also known as Miller Trust, recovery services in support of the HMS prime contract ("Prime Contract"), Contract # MED-10-001-F with the Iowa Medicaid Enterprise, Iowa Department of Human Services ("Client"); and

WHEREAS, Subcontractor is willing and able to render said services, as described below in Exhibit 1 hereto;

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. Subcontractor's Services. Subcontractor agrees to render services to HMS in accordance with the Statement of Work attached hereto as **Exhibit 1** and incorporated by reference. Subcontractor shall have sole responsibility for performance of the designated services described on Exhibit 1. Any changes to Exhibit 1 that increase the Subcontractor's level of effort shall be subject to the mutual agreement of both parties and be reduced to writing as an amendment to this Agreement.

2. a. Compensation. In consideration of those services, HMS shall pay Subcontractor in accordance with the Payment Schedule attached hereto as **Exhibit 2**. Subcontractor agrees that such rates shall not increase during the term of this Agreement unless approved by HMS. The fees outlined in Exhibit 2 represent full and sole reimbursement for duties performed. No additional charges, including pass through and out-of-pocket expenses, will be reimbursed except as outlined in Exhibit 2 or as agreed to in writing by the Parties.

b. Manner of Payment. Once each month, or as required by the Client, Subcontractor shall prepare and submit to HMS any information needed to create an invoice to the Client, including documentation to support figures and findings. HMS

shall then submit an invoice to the Client. HMS shall pay the Subcontractor within thirty (30) days after receipt of a valid invoice.

In the event that the Client fails or refuses to make payment of any services reflected in Subcontractor's invoices in whole or in part: (i) HMS shall timely pay all undisputed amounts; and (ii) HMS shall evaluate Subcontractor's claim for the disputed portion and if HMS deems the request to be reasonable, at Subcontractor's sole expense, HMS shall present Subcontractor's claim for the disputed portion to the Client for reconsideration.

3. a. Status as Independent Contractors. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement, and nothing contained herein shall be construed as providing for the sharing of profits or losses arising from the efforts of either or both of the parties hereto. Each party to this Agreement shall act as an independent contractor, and neither party shall have the power to act for or bind the other party except as expressly provided for herein. Subcontractor assumes sole responsibility for determining the manner and means of performance hereunder, provided that Subcontractor complies with its obligations under this Agreement to meet the performance standards described in Paragraph 8 herein..

b. Ineligible for Employee Benefits. Subcontractor and its employees shall not be eligible for any benefit available to employees of HMS, including, but not limited to, workers compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, savings plans and the like.

c. Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to Subcontractor under this Agreement. Subcontractor agrees to pay all state and federal taxes and other levies and charges as they become due on account of monies paid to Subcontractor hereunder, and to defend, indemnify and hold HMS harmless from and against any and all liability resulting from any failure to do so.

4. Term. This Agreement shall be effective as of May 1, 2010 and shall continue in effect for Three Years through June 30, 2013, with up to three one-year extensions if granted to HMS by the Client and mutually agreed upon by the Parties in writing unless earlier terminated as provided in paragraph 5 below.

5. Termination. Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within thirty (30) days of receipt of a notice from the non-defaulting party specifying such default. For purposes of this Agreement, "default" shall mean: (i) breach of any material term of this Agreement; (ii) an organizational conflict of interest is encountered due to Subcontractor financial interests or business dealings which cannot be avoided, resolved or sufficiently mitigated to permit continued performance of this contract; or (iii)

Subcontractor fails to adhere to terms of the contract. HMS may also terminate this Agreement without prior notice if: (i) the HMS Prime Contract with the Client is terminated for any reason; (ii) the Client directs HMS to terminate the Subcontractor's services under this Agreement; or (iii) the Subcontractor fails to perform its duties consistent with the standards described in Paragraph 8 herein. In the event that this agreement is terminated for any reason, HMS shall pay Subcontractor the fee specified in Exhibit 2 for any work HMS determines has been satisfactorily performed including work in process, or for any pending amounts sent to providers for recovery, through the date of termination as allowed for under the Prime Contract and only if the Client reimburses HMS for recoveries generated from this work.

6. Termination of Services and Return of HMS Property. Upon the expiration or earlier termination of this Agreement, Subcontractor shall immediately cease to perform the services hereunder, and shall deliver promptly to HMS, but no longer than ten (10) calendar days after the date performance of services has ceased, all property furnished to Subcontractor by HMS or Client or otherwise relating to the business, work and investigations of HMS, and to any Work Product (as defined below), patents or copyrights covered by this Agreement. Such property shall include but not be limited to all hardware, software, or other tangible items furnished or supplied to Subcontractor by HMS or its Client for purposes of performing work under this Agreement, written, graphical, electronic, and recorded material, and any copies, abstracts or summaries thereof.

7. Changes. HMS may, at any time by written order, make changes in the Subcontractor's work within the general scope of the Statement of Work, including the issuance of additional Statement(s) of Work or supplementary Task Orders which shall become part of this agreement once signed by all parties. If any change under this section causes an increase or decrease in the Subcontractor's cost of, or time required for, the performance of any part of the work, the parties shall negotiate an equitable adjustment to the compensation payable hereunder, and this Agreement shall be modified in writing accordingly. In addition, the parties agree to negotiate in good faith to revise this Agreement in the event of (i) legislation or action by a court of competent jurisdiction or any other government entity that affects this Agreement or the Prime Contract; (ii) changes in the available this Agreement or the Prime Contract; or (iii) other changes reasonably requested and deemed necessary by HMS to make this Agreement consistent with HMS's obligations to the Client.

8. Standard of Performance. Subcontractor warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. Subcontractor agrees to perform in a diligent, workmanlike, efficient, competent and skillful manner commensurate with the highest professional standards, and to devote such time as is necessary to perform the services required under this Agreement. Failure of Subcontractor to meet this standard of performance shall constitute grounds for termination for cause. Subcontractor agrees to remove and replace any of its personnel who, in the sole judgment of HMS or the client, are not performing their responsibilities at an acceptable

level.

9. Client Interface. Subcontractor shall not interface directly with the Client without prior approval from HMS. Subcontractor shall submit all documents and deliverables to the appropriate point of contact as directed by HMS. Subcontractor will not be permitted to discuss with the Client any matters related to this Agreement or the Prime Contract without the written consent of HMS. Subcontractor shall not be permitted to have its name displayed on any deliverables or other work product produced under this Agreement. Subcontractor agrees that it will not participate in meetings or engage in any communication with the Client regarding this Agreement, the Prime Contract, or any issues relating to those agreements outside the presence of HMS without the advance written consent of HMS.

10. Conflicts of Interest. Subcontractor warrants and represents that (i) the work hereunder will not create an actual, potential, or apparent conflict of interest with any other work it is now performing or may in the future perform, (ii) Subcontractor is not presently subject to any agreement with a competitor or potential competitor of HMS or with any other party that will prevent Subcontractor from performing in full accord with this Agreement and (iii) Subcontractor is not subject to any statute, regulation, ordinance, rule, order, sanction, contract, or other restriction that will limit its ability to perform the obligations under this Agreement. The parties agree that Subcontractor shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of services hereunder, and further provided that, without the prior consent of HMS, Subcontractor shall not accept other work with any competitor of HMS that creates a conflict of interest with HMS.

11. Proprietary Information; Non-Solicitation. Each party acknowledges that it may have access to and become acquainted with confidential and other information proprietary to the other party including, but not limited to, information concerning the other party, its operations, customers, business and financial condition, proprietary software and materials as well as information with respect to which the other party has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Each party agrees not to disclose, directly or indirectly, to anyone, or to use or let others use, for any purpose whatsoever, any Proprietary Information, of any type, whether or not specifically designated confidential or proprietary, acquired in the course of performing under this Agreement. The parties agree that, during the term of this Agreement and for a period of two (2) years from the termination of this Agreement, neither party will solicit for employment or otherwise attempt to hire any employees of the other party or its affiliates without the prior written consent of such party. However, nothing herein shall prohibit either party or any of its affiliates from employing an employee of the other party who responds to a public employment advertisement or who otherwise applies for employment directly, without solicitation or inducement by the hiring party or its affiliates.

12. Future Opportunities. In recognition of the access Subcontractor may have to HMS Proprietary Information, Subcontractor agrees that it will not submit

proposals for or otherwise solicit follow-on or re-bid opportunities for work currently covered by or related to the Prime Contract unless Subcontractor is participating as part of a HMS team in such efforts. For purposes of application of this provision, a "HMS team" is defined as entering a valid teaming agreement or being named as a potential subcontractor to HMS for other work. In the event Subcontractor independently competes for other opportunities against HMS, Subcontractor shall not include in its qualifications statement any reference to work performed or experience gained under this Agreement. Nothing herein shall obligate HMS to include Subcontractor in any future team or joint proposal efforts.

13. a. Work Product. Subcontractor agrees that all work product, inventions, discoveries, ideas, concepts, designs, specifications, reports, data, software, information systems, processes, methods, formulas and techniques, as well as improvements thereof or know-how related thereto (collectively "Work Product"), which are first discovered, developed, or created by Subcontractor in the performance of this Agreement shall be the sole property of HMS and/or the Client pursuant to the Prime Contract. Subcontractor agrees that all such Work Product shall from inception be considered "works made for hire" and shall be the exclusive property of HMS or its designee, and Subcontractor hereby expressly waives any right or interest it may have therein. Subcontractor agrees to provide, without additional compensation, such assistance as may reasonably be required by HMS in obtaining patents and copyrights for such Work Product in any and all countries, and in enforcing any HMS rights and interests relating to such Work Product or to any patents or copyrights resulting therefrom, including without limitation the execution by Subcontractor of all applications, assignments and other instruments as HMS may request. Subcontractor's pre-existing intellectual property shall remain the sole property of Subcontractor; provided, however, that to the extent the Subcontractor incorporates such intellectual property into any materials delivered to HMS and/or the Client hereunder, Subcontractor hereby grants to HMS and the Client a royalty-free, non-exclusive license to use such intellectual property solely to carry out the purposes of this Agreement and the Prime Contract.

b. No Restriction on Use or Disclosure. Subcontractor warrants and represents that all of the Work Product, findings and recommendations disclosed to HMS during the course of this Agreement may lawfully be disclosed by Subcontractor and, except as otherwise required under HIPAA rules, are not subject to any patent, license agreement, confidentiality agreement, trade secret law or any other restriction on use by or disclosure to HMS.

14. Indemnification. Subcontractor shall indemnify and hold HMS, its officers, employees, and agents harmless from and against any and all claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of (i) the negligence or willful misconduct of Subcontractor, its employees or agents or (ii) a breach by the Subcontractor of its obligations under this Agreement or the Prime Contract.

15. Insurance. Subcontractor agrees to carry, for the term of this Agreement,

the following insurance in the amounts indicated with insurance carriers that are licensed in the state(s) where the services will be performed and that have an A.M. Best rating of at least A-VII, a Standard & Poor's rating of at least AA, or a Moody's rating of at least Aa2:

a. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit
\$500,000	Fire Damage Limit (any one fire)

b. If a motor vehicle is used to provide services or products under the Prime Contract, the Subcontractor must have vehicle liability insurance, for bodily injury and property damage as required by law, on any auto including owned, hired and non-owned vehicles used in Subcontractor's business.

c. Workers' disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) if coverage is provided by a State fund or if a Subcontractor has qualified as a self-insurer, separate certification must be furnished to HMS to verify that coverage is in the state fund or that Subcontractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

d. Employers liability insurance with the following minimum limits:

\$100,000	each accident
\$100,000	each employee by disease
\$500,000	aggregate disease

e. Professional Liability Insurance (Errors and Omissions coverage) with the following minimum coverage: one million dollars (\$1,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

Each such insurance policy shall name HMS as additional insureds. Upon request of HMS, Subcontractor shall furnish certificates evidencing any and all such insurance.

16. Compliance. Subcontractor represents that it is not presently suspended or debarred or proposed for suspension or debarment by any government agency. Subcontractor agrees to comply with all federal, state and local statutes, regulations, ordinances and rules as well as any HMS corporate compliance policies and procedures relating, directly or indirectly, to Subcontractor's performance hereunder,

including but not limited to all applicable laws pertaining to equal employment opportunity and procurement integrity as well as conflict of interest avoidance and mitigation. With respect to the contingency or other payments to which Subcontractor may be entitled under Exhibit 2, Subcontractor represents and warrants that it is not subject to any statute, regulation, ordinance, rule, order, contract, or other restriction that would limit or prohibit such payment. In the event any such contingency or other payment is restricted, the parties agree to renegotiate the terms of this Agreement to cause it to be compliant with all applicable laws or, failing to agree on mutually acceptable terms, to terminate this Agreement. Subcontractor shall comply with all provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). Subcontractor shall appoint a Chief Security Officer and conduct staff training on HIPAA compliance no later than February 17, 2010 or at such time as directed or indicated in further guidance as issued by the Secretary of Health and Human Services. All notice requirements shall comply with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary of Health and Human Services from time to time.

17. Confidentiality. Subcontractor understands and agrees that any and all information, data, medical records, and materials disclosed to Subcontractor, in whatever form maintained, whether paper, electronic or otherwise, may contain confidential and protected information. Subcontractor covenants that all information, data, medical records, and materials gathered, used by, or disclosed to Subcontractor for the purpose of this Agreement or for any other purpose during the term of or related to this Agreement, will be regarded as confidential information and will not be disclosed to or discussed with third parties at any time, including after the termination of this Agreement. Confidential information may be disclosed (i) when directed by HMS to a HMS Client; (ii) to any other person with HMS's written consent; or (iii) if required by law, as that concept is defined with respect to disclosure of protected health information in federal regulations at 45 CFR 164.103. If disclosure is required by law, Subcontractor shall provide immediate verbal notice to HMS and follow up within five (5) calendar days with written notification to HMS. Subcontractor agrees to safeguard all confidential information as defined herein and to return all such information to HMS within thirty (30) days of HMS's request. In addition, Subcontractor shall execute the Business Associate Agreement attached hereto as **Exhibit 3** and incorporated herein as if fully set forth and to be bound by all its terms and conditions. This provision shall survive the termination of this Agreement.

18. Prime Contract. Subcontractor and HMS agree that the services provided hereunder are subject to the terms of the Prime Contract between HMS and the Client. Subcontractor acknowledges that it is familiar with the terms and conditions of the Prime Contract and agrees to be bound by the terms and conditions of the Prime Contract applicable to its performance hereunder as though the applicable terms and conditions of the Prime Contract were set forth herein.

19. Miscellaneous.

a. Survival. The obligations assumed by Subcontractor pursuant to paragraphs 11, 12, 13, 14, 17, 19.b., 19.d, and 19.g hereof shall survive the expiration or earlier termination of this Agreement.

b. Attorneys' Fees. In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of the costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the Court.

c. Waiver, Modification and Amendment. No provision of this Agreement may be waived unless in writing, signed by all of the parties hereto. Waiver of any one provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other provision. This Agreement may be modified or amended only by a written agreement executed by all of the parties hereto.

d. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to conflict of law principles. The parties agree that the sole venue for legal actions related to this Agreement shall be the state and Federal courts for New York County, New York.

e. Assignment; Subcontracting. Neither this Agreement nor any duties or obligations hereunder shall be assigned, transferred, or subcontracted by either party without the prior written approval of the other party.

f. Notices. All notices under this Agreement will be in writing and will be delivered by personal service, facsimile or certified mail, postage prepaid, or overnight courier to such address as may be designated from time to time by the relevant party, which initially shall be the address set forth on the signature page to this Agreement. Any notice sent by certified mail will be deemed to have been given five (5) days after the date on which it is mailed. All other notices will be deemed given when received. No objection may be made to the manner of delivery of any notice actually received in writing by an authorized agent of a party.

g. Records; Inspection. Subcontractor shall maintain books, records, and documents in accordance with accounting procedures and practices that sufficiently and properly reflect the services rendered and funds expended in connection with this Agreement. All books, records, documents, or other materials associated with this Agreement shall be subject to reasonable inspection, review, or audit by HMS and/or the Client and their designees, during Subcontractor's usual business hours and upon prior notice. Subcontractor shall retain all financial and other records pertaining to its work under this Agreement for five (5) years after the termination or expiration of this Agreement or the conclusion of any audit pertaining to this Agreement, whichever is later, except that such retention requirement shall not apply to records containing protected health information or other confidential information that Subcontractor is obligated to destroy or return to HMS or its Client under the provisions of Paragraph 17



of this Agreement or the Business Associate Agreement attached hereto as Exhibit 3.

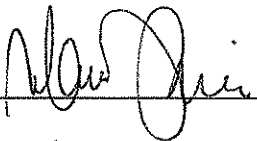
h. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

i. Publicity. No news release, public announcement, advertisement, or any other form of publicity concerning this Agreement may be issued by Subcontractor nor may Subcontractor communicate with any client of HMS regarding HMS and/or HMS's performance pursuant to the Prime Contract without the prior review and written approval by HMS of such proposed publicity or communication.

j. Entire Agreement. This Agreement and its attached Exhibits contain the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives.

HEALTH MANAGEMENT SYSTEMS, INC.  
401 Park Avenue South  
New York, New York 10016


By 

Title Executive Vice President

Printed Name Maria Pernon

Date: 6/17/10

SUMO GROUP, INC.  
1011 Locust, 2<sup>nd</sup> Floor  
Des Moines, IA 50309

By 

TITLE

Robert J. Fleming Jr.

Printed Name

Tax ID #: ~~XXXXXXXX~~

#42-1489025

Date: 6/16/10

## Exhibit 1

### **Statement of Work**

**Scope of Services.** In connection with the Prime Contracts, SUMO will provide to HMS overall implementation and Estate recovery and Trust support services, (the "Services"), that will include, but are not limited to, the following:

- a. **Implementation Professional Services.** Provide assistance and support as requested by HMS, to HMS, in connection with the Prime Contract, including but not limited to:
  - Work Plan development and update assistance
  - Process Flow development and update assistance
  - Implementation Meeting Assistance.
  - Operations Manual Development and update assistance
  - Other IME implementation assistance on deliverables and reports.
  
- b. **Estate and Special Needs Trust and Medical Assistance Income (Miller) Trust Recovery.** Provide Estate recovery services/support as requested by HMS, to HMS, in connection with the Agency contracts. Services include, but are not limited to:
  - Outreach and education to Iowa attorneys, funeral directors, recipients and other entities on the Estates recovery and trust projects
  - Receive Names of Deceased Medicaid Recipients
  - Initiate Recoveries Promptly
  - Coordinate with the Attorney General's Office
  - Meet with the Department and Other Entities
  - Provide Technical Assistance
  - Maintain a Toll-Free Telephone Number.
  - Provide Information to the Department's Fiscal Agent
  - Provide Timely, Knowledgeable, and Courteous Answers
  - Collect Data and Provide Reports
  - Collect and Deposit Recoveries and Make Refunds
  - Transfer Recoveries and Interest
  - Coordinate with the Department, Attorney General's Office, the Iowa Department of Public Health and the Iowa State Bar Association
  - File in Probate Court as Appropriate
  - Notify the Representative of an amount owed the Department
  - Determine the Value of the Estate Subject to Recovery and the Expenses
  - Determine the amount of Medicaid Paid on Behalf of the Recipient Subject to Recovery
  - Notify Representative of the Debt Due

- Notify the Representative of the Right to Claim Undue Hardship
  - Provide an Automated Computer System
  - Educate the Public, Disseminate Information, and Answer Inquiries About the Estate Recovery Program
  - Collect Data and Provide Reports
- c. **Qualified Personnel.** Provide appropriate, qualified personnel to HMS in connection with the Agency contracts
- d. **Other applicable IME RFP/contract requirements.** Provide other reports and deliverables that are related to the above and in the RFP/contract.

## Exhibit 2

### Payment Schedule

- 2.1 Fees.** In consideration of the Services to be performed under this Agreement by SUMO, HMS will pay to SUMO a fee according to the following schedule:

Scope of Work	Fee
Estate Recovery, Special Needs Trust and Medical Assistance Income (Miller) Trusts	<ul style="list-style-type: none"><li>• <b>Seventy (70.0%)</b>-percent of the fees HMS receives from the Agency for Estate and trust recoveries received <b>between May 1, 2010 and December 31, 2010.</b></li><li>• <b>Seventy five (75.0%)</b> – percent of the fees HMS receives from the Agency for Estate and trust recoveries received <b>between January 1, 2011 and the end of the contract.</b></li></ul>

### Exhibit 3

#### Business Associate Agreement

This Business Associate Agreement ("BAA" or "Agreement") is entered into on this \_\_\_\_\_ day of June 16 2010 between Health Management Systems, Inc., a wholly owned subsidiary of HMS, Holdings Corp., the "Covered Entity" and SUMO Group Inc. the "Business Associate."

#### WITNESSETH:

WHEREAS, HMS and Business Associate are Parties to a Subcontract Agreement, of which this Business Associate Agreement is Exhibit 3, that contains express and implied mutual promises and covenants that in some instances require the use or disclosure of Protected Health Information ("PHI");

WHEREAS, the Health Insurance Portability and Accountability Act's ("HIPAA") Privacy Regulations as amended by Health Information Technology for Economic and Clinical Health ("HITECH") provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), require a Covered Entity to enter into a Business Associate contract with HMS, so that HMS may obtain PHI from or on behalf of a Covered Entity;

WHEREAS, a condition in the Business Associate contract is that HMS must ensure that every contractor or agent, to whom HMS provides PHI received from a Covered Entity or obtains on behalf of a Covered Entity, agrees to the same restrictions and conditions that apply to HMS through the Business Associate contract;

WHEREAS, HMS understands that it must enter into this Agreement so that PHI may be disclosed to Business Associate and to allow Business Associate to perform and provide services to HMS as part of the Subcontract Agreement.

NOW, THEREFORE, in consideration of the Parties' continuing obligation as set forth in the Subcontract Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement to comply with the Privacy and Security Regulations and to protect the interests of both Parties:

#### I. Background and Purpose

- (a) Covered Entity is subject to and must comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the HITECH provisions of ARRA and all regulations promulgated pursuant to authority granted therein;

- (b) Business Associate constitutes a Business Associate of Covered Entity (as such term is defined in the Regulations, *see* 45 CFR 160.103) and wishes to commence or continue its business relationship with Covered Entity;
- (c) Business Associate acknowledges that Covered Entity must comply with the regulations at CFR at Title 45, Sections 160 and 164 and that to achieve such compliance, the written agreement between Covered Entity and Business Associate must contain certain satisfactory assurances that Business Associate will appropriately safeguard Protected Health Information (as that term is defined in Federal regulations at 45 CFR 164.501) which it receives from, or creates or receives on behalf of Covered Entity.
- (d) Business Associate acknowledges that Business Associate must comply with all provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") pursuant to the terms of the HITECH provisions of ARRA.

## II. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy and Security Rule ("the Rule") as amended by HITECH provisions of ARRA,, which is defined for purposes of this Agreement as the Code of Federal Regulations ("C.F.R.") at Title 45, Parts 160 and 164 as amended from time to time.

- (a) Business Associate. "Business Associate" shall mean SUMO Group Inc
- (b) Covered Entity. "Covered Entity" shall mean HMS.
- (c) Designated Record Set. "Designated Record Set" has the same meaning as this term has in 45 CFR §164.501.
- (d) Discovery. "Discovery" shall mean the first day on which a is known to Business Associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of Business Associate), or should reasonably have been known to Business Associate, to have occurred.
- (e) Electronic Health Record. "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed and consulted by authorized health care clinicians and staff.
- (f) Individual. "Individual" has the same meaning as this term has in 45 CFR §164.501.
- (g) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E., as amended by the HITECH provisions of ARRA.
- (h) Protected Health Information. "Protected Health Information" (or "PHI") has the same meaning as this term has in 45 CFR §160.103 (as amended by the HITECH provisions of ARRA), limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (i) Required By Law. "Required By Law" has the same meaning as this term has in 45 CFR §164.501.
- (j) Secretary. Shall mean the Secretary of the Department of Health and Human

Services or his or her designee.

- (k) Security Breach. "Security Breach" has the same meaning as this term has in §13400 of HITECH provisions of ARRA, or means the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. Security Breach does not include:
- a. Any unintentional acquisition, access, or use of Protected Health Information by an employee or individual under the authority of the Business Associate if:
    - i. Such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with Business Associate; and
    - ii. Such information is not further acquired, accessed, used or disclosed by any person; or
  - b. Any inadvertent disclosure from an individual who is otherwise authorized to access Protected Health Information at a facility operated by Business Associate to another similarly situated individual at the same facility; and
  - c. Any such information received as a result of such disclosure is not further acquired, accessed, used or disclosed without authorization by any person.
- (l) Security Breach Compliance Date. "Security Breach Compliance Date" means the date that is thirty (30) days after the Secretary publishes interim final regulations to carry out the provisions of Section 13402 of Subtitle D (Privacy) of ARRA which date is September 24, 2009.
- (m) Unsecured Protected Health Information. "Unsecured Protected Health Information" means protected health information, in any form or medium, including electronic, paper, or oral form, that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology, such as encryption and destruction of the information, as specified by the Secretary in guidance as issued by the Secretary from time to time. Protected health information (PHI) is rendered unusable, unreadable, or indecipherable to unauthorized individuals if one or more of the following applies:
- (1) Electronic PHI has been encrypted as specified in the HIPAA Security Rule by "the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key" and such confidential process or key that might enable decryption has not been breached. To avoid a breach of the confidential process or key, these decryption tools should be stored on a device or at a location separate from the data they are used to encrypt or decrypt. The encryption processes identified below have been tested by the National Institute of Standards and Technology (NIST) and judged to meet this standard.

(a) Valid encryption processes for data at rest are consistent with NIST Special Publication 800-111, *Guide to Storage Encryption Technologies for End User Devices*.

(b) Valid encryption processes for data in motion are those which comply, as appropriate, with NIST Special Publications 800-52, *Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations*; 800-77, *Guide to IPsec VPNs*; or 800-113, *Guide to SSL VPNs*, or others which are Federal Information Processing Standards (FIPS) 140-2 validated.

(2) The media on which the PHI is stored or recorded have been destroyed in one of the following ways:

(a) Paper, film, or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(b) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800-88, *Guidelines for Media Sanitization*, such that the PHI cannot be retrieved.

### **III. Obligations and Activities of Business Associate**

- (a) Business Associate agrees not to use or disclose Protected Health Information other than as permitted by this BAA or as required by law. Business Associate acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with any of the use and disclosure requirements of this Agreement and any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.
- (b) Business Associate agrees that beginning on the effective date of this Agreement or the Security Breach Compliance Date it will report to Covered Entity any Security Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than the time period allowed in any applicable underlying contract or later than sixty (60) calendar days after Discovery of a Security Breach, as applicable. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Business Associate, to have been, accessed, acquired, or disclosed during such Security Breach. In addition, Business Associates shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Security Breach, Business Associate's notification of a Security Breach under this section shall comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time.



- (c) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BAA or as required by law, and to implement administrative, physical, and technical safeguards that are reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits and as are otherwise required by ARRA and related guidance issued by the Secretary from time to time.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect of any use or disclosure that is known to Business Associate to have occurred in violation of the terms of this BAA.
- (e) All reporting required of Business Associate under the terms of this Business Associate Agreement shall be made by Business Associate to HMS's Chief Privacy and Compliance Officer, Alexandra Holt in writing addressed to her at 401 Park Avenue South, New York, NY 10016 and immediately via email to [AHolt@hms.com](mailto:AHolt@hms.com) or telephonically at 1-212-857-5337.
- (f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits. With respect to Electronic Protected Health Information, Business Associate shall implement and comply with (and ensure that its subcontractors implement and comply with) the administrative safeguards set forth at 45 C.F.R. 164.308, the physical safeguards set forth at 45 C.F.R. 310, the technical safeguards set forth at 45 C.F.R. 164.312, and the policies and procedures set forth at 45 C.F.R. 164.316 to reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate acknowledges that, effective the later of the Effective Date of this Agreement or February 17, 2010, (i) the foregoing safeguard, policies and procedures requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be liable under the civil and criminal enforcement provisions set forth in 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the safeguard, policies and procedures requirements and any guidance issued by the Secretary from time to time with respect to such requirements.
- (g) Business Associate agrees to report any security incidents, as defined by the Rule and HITECH provisions of ARRA, to the Covered Entity

- (h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity and/or to the Secretary of the United States Department of Health and Human Services, within ten (10) business days of receiving such request, or at such other time as may be designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Rule and the HITECH provisions of ARRA and related guidance as issued by the Secretary from time to time.
- (i) Business Associate agrees to document such disclosures of Protected Health Information (PHI) and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual or an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528 and the HITECH provisions of ARRA and related guidance as issued by the Secretary from time to time..
- (j) Business Associate agrees to provide to Covered Entity or the Individual to whom PHI relates, upon request and within ten (10) business days of receiving such request, information collected in accordance with Section III (g) of this BAA and sufficient to constitute, or permit Covered Entity to provide, a response to a request by the Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528. . In addition, with respect to information contained in an Electronic Health Record, Business Associate shall document, and maintain such documentation for three (e) years from date of disclosure, such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of information contained in an Electronic Health Record, as required by Section 13405(c) of Subtitle D (Privacy) of ARRA and related regulations issued by the Secretary from time to time.
- (k) Business Associate agrees to provide access, at the request of Covered Entity, within ten (10) business days to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 C.F.R. 164.524 and Section 13405(e) of Subtitle D (Privacy) of ARRA and related guidance issued by the Secretary from time to time..
- (l) Business Associate agrees to promptly make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual to whom the PHI pertains.

#### **IV. Permitted Uses and Disclosures by Business Associate**

- (a) Business Associate shall be permitted to use and/or disclose Protected Health Information provided or made available from Covered Entity to complete any and all services agreed to under the Subcontract or other Service Agreement and any corresponding Statement(s) of Work, provided that such use or disclosure would not violate the Privacy Rule or ARRA if done by the Covered Entity.
- (b) Except as otherwise limited in this BAA, Business Associate acknowledges that it shall request from Covered Entity and so disclose and so disclose to its affiliates, agents and subcontractors or other third parties, only (i) the information contained in a "limited data set," as such term is defined at 45 C.F.R. 164.514(e) (2), or, (ii) if needed by Business Associate, to the minimum necessary to accomplish the intended purpose of such requests or disclosures. In all cases, Business Associate shall request and disclose Protected Health Information only in a manner that is consistent with guidance issued by the Secretary from time to time.
- (c) Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Rule or ARRA (including the minimum necessary standard established by the Rule or ARRA) if done by the Covered Entity or violate the policies and procedures of the Covered Entity.
- (c) Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that the disclosures are required by law within the meaning of the Rule or ARRA or any guidance as issued by the Secretary from time to time or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- (d) Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide Data Aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1)

## **V. Obligations of Covered Entity**

- (a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
- (d) Permissible requests by Covered Entity: Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended, and shall not be construed, to limit Business Associate's capacity to use or disclose Protected Health Information for the proper management and administration of the Business Associate or to provide Data Aggregation services to Client, as provided for and expressly permitted under Section IV. (b), (c), and (d) of this BAA.

## VI. Term and Termination

- (a) **Term.** The Term of this BAA shall be effective upon execution, and shall terminate when the contractual or other relationship between Covered Entity and Business Associate that involves or requires the receipt, creation, use, and/or disclosure of PHI by or to the Business Associate is terminated or ceases to exist.
- (b) **Termination for Cause.** Upon the Covered Entity obtaining knowledge of a pattern of activity or practice by Business Associate that constitutes a material breach or violation of Business Associate's obligations under this BAA, Covered Entity shall

(1) Provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) days of receiving notice of the breach and/or violation, and, if such action does not successfully bring about cure of the breach or an end to the violation within the time specified by Covered Entity; shall terminate this BAA and the underlying contract or relationship under which the Business Associate has access to, uses or discloses PHI on behalf of Covered Entity; (2) Immediately terminate this BAA and the underlying contract or relationship under which the Business Associate has access to, uses or discloses PHI on behalf of Covered Entity, if cure of the breach or causing the violation to end is not possible; or

(3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) **Obligations of Business Associate Upon Termination**

Except as provided in paragraph (2) of this subsection, upon termination of this BAA, for any reason, Business Associate shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

In the event that return or destruction of any Protected Health Information is not feasible, Business Associate shall extend the protections of this BAA to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information

(d) **State Law.**

**If state law applicable to the relationship between Business Associate and Covered Entity contains additional or more stringent requirements than federal law for Business Associates regarding any aspect of PHI privacy or security, then Business Associate agrees to comply with the higher standard contained in applicable state law.**

**VII. Miscellaneous**

- (a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended
- (b) **Amendment.** This BAA may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. Covered Entity and Business Associate agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, ARRA and HIPAA.

- (c) **Survival.** The respective rights and obligations of Business Associate under Section VI (c) of this BAA shall survive the termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- (e) **Notice to Covered Entity.** Any notice required under this BAA to be given Covered Entity shall be made in writing to:

Alexandra Holt  
Chief Privacy and Compliance Officer  
401 Park Avenue South  
New York, NY 10016  
(212) 857-5337.  
[AHolt@hms.com](mailto:AHolt@hms.com)

- (f) **Notice to Business Associate.** Any notice required under this BAA to be given Business Associate shall be made in writing to:

Robert J Fleming Jr.  
1011 Laurel St. SE  
Rossmore, GA 30309

\* \* \* \* \*

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused this Business Associate Agreement to be executed by duly authorized officers.

HMS  
By: [Signature]  
Print Name: Maria Perin  
Print Title: Executive Vice President  
Date: 6/17/10

BUSINESS ASSOCIATE  
By: [Signature]  
Print Name: Robert J Fleming Jr.  
Print Title: President  
Date: 6/16/10